

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 28 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Local Exchange Carriers' Rates, Terms)
and Conditions for Expanded)
Interconnection)
Through Virtual Collocation for)
Special Access and Switched Transport)

Transmittal No.
CC Docket No. 94-97
Phase I

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MFS COMMUNICATIONS COMPANY, INC.
OPPOSITION TO BELL ATLANTIC MOTION TO VACATE PRESCRIPTION

MFS Communications Company, Inc., by its undersigned counsel and pursuant to Section 1.45 of the Commission's rules¹, respectfully requests the Commission to reject Bell Atlantic's *Motion to Vacate Prescription*.² First, Bell Atlantic's motion is an unauthorized pleading which fails to conform to the Commission's established rules of practice and procedure. Second, if Bell Atlantic desires to replace its existing prescribed rates, it can do so in accordance with established Commission rules by filing proposed tariff revisions supported by cost information adequate to justify these rates. Finally, Bell

¹ 47 C.F.R. § 1.45 (1994).

² *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, CC Docket 94-97 (released Sept. 18, 1995) (*Motion to Vacate Prescription*).

Atlantic's attempt to selectively employ term discounts, but not volume discounts, is both unreasonable and anticompetitive. Moreover, MFS maintains that Phase II of CC Docket 94-97 would be the more appropriate forum for making any revisions to the interconnection rates currently prescribed for Bell Atlantic.

First, Bell Atlantic's *Motion to Vacate* is not an authorized pleading under the Commission's rules and thus the relief Bell Atlantic seeks through this motion is inappropriate. The Commission's rules specify that additional pleadings other than those provided for in Part 1 of its rules may be filed "only if specifically requested or authorized by the Commission."³ Bell Atlantic's *Motion to Vacate* clearly fails to fall into either the "requested" or "authorized" category.

Bell Atlantic cites no authority for the relief that it seeks and, indeed, none appears to be available. It is clear that, in actuality, Bell Atlantic is attempting to seek reconsideration of the Commission's *Prescription Order*.⁴ However, the rules governing reconsideration of a Commission order are clear, and Bell Atlantic may not use this unauthorized *Motion to Vacate* as a "back door" means of obtaining reconsideration of that Order. Because Bell Atlantic's *Motion to Vacate* is an unauthorized pleading in accordance with the Commission's rules, the Commission must reject this motion and deny the relief sought by Bell Atlantic.

³ 47 C.F.R. § 1.45(c) (1994).

⁴ See *Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access*, 8 FCC Rcd. 8344 (1993).

Second, by filing patently unreasonable rates, Bell Atlantic, in essence, forced the Commission to adopt its prescription orders. Commission-prescribed rates cannot be modified by unilateral actions by Bell Atlantic, and may not be revised by the Commission without cost data adequate to support a finding that it is appropriate to change the prescribed rates. However, nothing in Bell Atlantic's *Motion to Vacate* provides the Commission with the information required to support a reasoned decision for altering its currently prescribed rates.

If Bell Atlantic truly desires to replace its existing prescribed rates with reasonable, non-discriminatory rates for expanded interconnection, it can do so, appropriately and lawfully, by filing proposed tariff revisions that include reasonable rates and the adequate cost information to justify these rates. Such a filing will provide both the Commission and the public with an adequate basis with which to make a reliable determination as to the reasonableness of those rates, in accordance with the tariff review process.

Finally, in its *Motion to Vacate*, Bell Atlantic effectively threatens to withhold the introduction of volume and term discount rates for expanded interconnection from its interconnector customers until the Commission has provided Bell Atlantic with the relief it seeks (namely, the adoption of a revised overhead loading factor). MFS contends that Bell Atlantic's position is inherently unreasonable because the very tariff that Bell Atlantic is withdrawing in its *Motion to Vacate* was little more than an attempt to apply term discounts in a selective manner that had the perverse effect of actually increasing its interconnection rates.

As MFS demonstrated in its opposition to Bell Atlantic's Transmittal No. 7842⁵, Bell Atlantic's attempt to selectively employ term discounts, but not volume discounts, is both unreasonable and anticompetitive. Moreover, MFS continues to assert that the failure of Bell Atlantic or any other local exchange carrier ("LEC") to refuse to provide both volume and term discounts for virtual collocation, while routinely providing such term discounts for their end user customers, is inherently unreasonable.

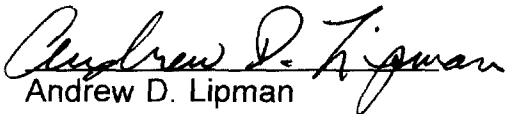
MFS strongly believes that the Commission must require Bell Atlantic, as well as every other LEC, to tariff volume and term discounted rates with discount levels similar to those provided to customers of comparable special or switched access services. In doing so, the Commission must reject attempts -- like Bell Atlantic's -- to introduce discounts in an incomplete or phased-in manner, and must require that interconnectors be treated in the same way as the LECs' end-user customers. MFS urges the Commission to revise its expanded interconnection rules accordingly, and respectfully requests that the Commission include the issue of mandatory volume and term discounts for LEC expanded interconnection services in Phase II of CC Docket 94-97.

⁵ *MFS Communications Company, Inc. Petition to Reject, or Alternatively, to Suspend and Investigate Proposed Tariff Revisions*, filed in Opposition to Bell Atlantic's Transmittal No. 784 on June 16, 1995.

For the reasons stated above, MFS respectfully requests that the Commission deny Bell Atlantic's *Motion to Vacate Prescription*.

Respectfully Submitted,

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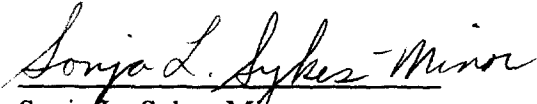

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Dated September 28, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September 1995, copies of the foregoing MFS COMMUNICATIONS COMPANY, INC. OPPOSITION TO BELL ATLANTIC MOTION TO VACATE PRESCRIPTION, CC Docket No. 94-97 were sent via Hand-Delivery* or First-Class Mail, U.S. postage prepaid, to the parties on the attached service list.


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